

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

|                      |   |                  |
|----------------------|---|------------------|
| JEFFREY R. PETERSON, | ) |                  |
|                      | ) |                  |
| Plaintiff,           | ) |                  |
|                      | ) | No. CV-10-586-HU |
| v.                   | ) |                  |
|                      | ) |                  |
| ACUMED, LLC,         | ) |                  |
|                      | ) |                  |
| Defendant.           | ) | OPINION & ORDER  |
|                      | ) |                  |
|                      | ) |                  |

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1 HUBEL, Magistrate Judge:

2 Before the court is defendant Acumed, LLC's Motion for Summary  
3 Judgment [#30]. For the reasons set forth below, I deny the  
4 motion.

5 **FACTS**

6 Plaintiff Jeffrey Peterson worked for defendant Acumed, LLC as  
7 a controller. Acumed is a privately held company owned by Robert  
8 Pritzker, who also owns a company known as Colson. Acumed is a  
9 Colson Associated Company, and has a consulting arrangement with  
10 Colson whereby it reports to and consults with Colson regarding  
11 various operational matters.

12 As controller for Acumed, Peterson reported to, among others,  
13 Louhan Tucker, the chief financial officer and corporate controller  
14 of Colson. During 2009 Tucker expressed his dissatisfaction with  
15 Peterson on a number of occasions. Tucker's dissatisfaction with  
16 Peterson led Peterson to contemplate resignation from Acumed in  
17 late 2009. On December 29, 2009, Peterson met with a  
18 representative of Acumed's human resources department, Noel Van  
19 Dyke, and told her that he was "considering resigning." Angeli  
20 Decl. Ex. 2, at 53. Peterson "asked her about the potential to  
21 receive severance pay in connection with a resignation." Id. at  
22 54. He told her "that Acumed should give [him] a separation  
23 package that mirrored Karsten's severance." Id. at 55.

24 As controller, Peterson was familiar with the severance  
25 packages of at least two former Acumed employees, Sue Mockridge and  
26 Karsten Zuendel. Specifically, David Jensen, Acumed's president,  
27 had called Peterson about Karsten Zuendel and "told [Peterson] what  
28 he was going to do on a severance package, [and] asked [Peterson's]

1 opinion if [he] thought it was acceptable, and [Peterson] said it  
2 was." Decl. Courtney Angeli, Ex. 2, at 55.

3 Van Dyke testified that during the December 29 meeting,  
4 Peterson told her he thought "that Acumed would be doing the right  
5 thing if we gave him a separation equivalent to what Karsten  
6 Zuendel . . . received, which was six months separation pay and six  
7 months of COBRA continuation." Angeli Decl. Ex. 4, at 18.  
8 Peterson and Van Dyke agreed not to take any action based on the  
9 conversation until Peterson thought more about the decision.

10 Shortly thereafter, Peterson left on a business trip to China.  
11 Near the end of the China trip, Peterson either called or sent a  
12 text message to Van Dyke and indicated he wanted to go forward with  
13 what they had discussed at the December 29 meeting.

14 On January 11, 2010, Van Dyke had a phone conference with  
15 Jensen and Alan Kozlowski and recommended, "based on Jeff's tenure  
16 with the company, we consider recommending a separation of six  
17 months continuation of pay and six months of COBRA continuation."  
18 Id. According to Van Dyke, "We ended that conversation agreeing  
19 that we needed to contact Louhon Tucker because his approval would  
20 be needed for such a severance, and he should be notified that Jeff  
21 had resigned." Id. at 18-19. According to Peterson, he had not  
22 yet resigned, and communicated to Van Dyke only that he "want[ed]  
23 to move ahead on working on a solution." Angeli Decl. Ex. 2, at  
24 63.

25 "First thing in the morning" on January 12, 2010, Van Dyke,  
26 Jensen, Kozlowski, and Tucker had a conference call. Angeli Decl.  
27 Ex. 1, at 17-18. When asked in his deposition what he said during  
28 the conversation, and what Tucker said during the conversation,

Jensen made no mention of discussing a severance package. Id. at 18-19. After the call, Van Dyke sent the parties to the call an email messaging summarizing what they talked about. She wrote,

Considering Jeff's tenure with Acumed and his executive-level position, in our discussion with you we all agreed that his separation agreement will likely include the following:

- Up to 6 months pay at his current salary, payable every two weeks on payday (ending if he finds employment before 6 months)
- COBRA continuation (medical and dental) for his family for up to 6 months
- Outplacement services at Lee Hecht Harrison (Dollar amount limit around \$8K - I will see what we paid for Karsten's for comparison)

We did not specifically discuss the next two items, but I would like to include them in this type of severance:

- Letter of recommendation at Jeff's request
- Will not contest unemployment

Please review this information with Bob<sup>1</sup> at your earliest convenience and I'll work through Tony Dombrow to make sure the final separation agreement is accurate and complete.

Decl. Paul Breed Ex. 7, at 2.

Later that day, Peterson met with Jensen. According to Peterson, Jensen opened the meeting by saying "I'm aware that you would like to resign your position." Id. at 68. According to Peterson, Jensen said that he had talked about Peterson's departure with Van Dyke, Tucker, and Koslowski. Id. at 70. Peterson recalls that Jensen communicated to him that Acumed would create a

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<sup>1</sup> Robert Pritzker is the owner of both Acumed and Colson.

1 severance package that was "[b]etter than what they did for  
2 Karsten." Id. at 68. According to Jensen, he "said that Acumed  
3 would work to create a severance for him similar to what we did for  
4 Karsten Zuendel." Angeli Decl. Ex. 1, at 20. Peterson was under  
5 the impression that Jensen had authorization from Colson, by  
6 talking to Tucker and Kozlowski, to offer a severance package.  
7 Angeli Decl. Ex. 2, at 70. Although Jensen did not say there were  
8 any strings attached to the offer of severance, Peterson told  
9 Jensen he was "willing to do whatever Acumed needed to make a clear  
10 transition to operating in [his] absence." Id. at 68. Jensen  
11 called Nancy Stout, Peterson's successor, into the meeting, and  
12 Peterson informed her "I'm leaving Acumed." Id. at 69. According  
13 to Peterson, the people at the meeting discussed "figur[ing] out  
14 what [his] last day is," but did not agree on a date. Id.

15 According to Acumed, it was company policy that severance  
16 packages for employees above a certain level needed to be approved  
17 by Colson. Peterson testified he was aware that "if you were going  
18 to give somebody a raise at the level of \$9000 a month and above,  
19 you had to have this signed by Colson." Decl. Courtney Angeli, Ex.  
20 2, at 23. Likewise, Peterson knew that "A PAR<sup>2</sup> concerning me would  
21 require the signature of Louhon Tucker," from Colson. Angeli Decl.  
22 Ex. 2, at 24-25. Peterson testified that he did not know, however,  
23 that Colson needed to sign a document authorizing an offer of  
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25  
26 <sup>2</sup>A "PAR" is a Personnel Action Request. Angeli Decl. Ex. 5,  
27 at 7. The Colson Associates Policy Manual details that a PAR  
28 must be used for "special salary arrangements." Id. "Examples  
of special arrangements include but are not limited to: car  
allowance or estimated sales commission." Id.

1 severance pay to him. Id. at 70. Van Dyke testified that "when  
2 the president says that a salary increase is granted to someone, it  
3 is assumed that he has obtained the proper approvals," and "It's  
4 the president's responsibility to get those approvals." Breed  
5 Decl. Ex. 4, at 2-3. Van Dyke clarified that regarding a salary  
6 increase or a bonus, "it is not the employee's job to say, 'was  
7 this approved?'" Id. at 5.

8 Peterson testified, "Mr. Jensen had talked to Colson, he had  
9 talked to Alan, he had talked to - "Colson" being Alan and Louhon,  
10 and said, 'We're going to treat you better than we treated  
11 Karsten.'" Angeli Decl. Ex. 2, at 70.

12 Following the meeting with Jensen, Peterson talked with Van  
13 Dyke. According to Van Dyke, "Jeff came to my office and was  
14 visibly, you know, excited that he had received this information;  
15 and I reminded him again that we had no information or approval  
16 from Colson." Breed Decl. Ex. 3, at 9. Peterson acknowledges he  
17 talked with Van Dyke after the meeting with Jensen, but does not  
18 recall her reminding him that Acumed couldn't make an offer  
19 without approval from Colson. Angeli Decl. Ex. 2, at 71.

20 According to Van Dyke, after Jensen's meeting with Peterson,

21 "David . . . called Louhon, and Louhon  
22 reminded David that it was premature for him  
23 to put severance terms on the table, and that  
24 a termination date had not yet been  
25 established. And within 24 hours, David  
circled back to Mr. Peterson and said, 'I  
spoke prematurely. Nothing has been  
authorized by Colson yet.' So that would have  
been on January 13."

26 Breed Decl. Ex. 3, at 7. On January 14 or 15, 2010, Peterson met  
27 with Jensen and Van Dyke once again. According to Peterson, Jensen  
28 and Van Dyke communicated that "they would like to have their

1 controller through the audit." Angeli Decl. Ex. 2, at 73. The  
2 audit was scheduled to conclude on March 5, 2010. Peterson  
3 testified, "They said the severance package I received would be the  
4 same, assuming I . . . you know, that I behaved, I believe that was  
5 the term, during the audit." Id. Peterson alleged that Van Dyke  
6 said, "It's the same package, it just starts in March, in six  
7 weeks, not today." Peterson remembers, "they took my severance off  
8 the table of the January - they said, 'We won't pay you a severance  
9 unless you stay until March 5th' . . . . And Louhon said your bonus  
10 is back on the table.'" Id. at 77.

11 At that point, Peterson allegedly requested a written  
12 guarantee of his severance package coming out of the meeting, and  
13 was told that it was not possible. Peterson "believe[d] they were  
14 unable to do it because Louhon wouldn't - they felt they did not  
15 want to communicate that to Louhon." Id. at 76. Peterson alleges  
16 he was mad because they had changed the deal, but that his anger  
17 was eased by reassurances he got from Jensen: "I said, 'I don't  
18 trust Louhon Tucker,' and David said, 'Well, you trust me, don't  
19 you?' And I said, 'Absolutely.'" Id. at 78. Peterson testified  
20 that he agreed during that meeting to work until March 5, 2010.  
21 Id. at 79.

22 Peterson worked until early March. The declarations do not  
23 make clear when it occurred, but near the end of Peterson's  
24 employment, he was called to a meeting with Van Dyke and Kozlowski,  
25 and Jensen was present by telephone. At the meeting Jensen  
26 informed Peterson he would not receive a bonus, and Peterson was  
27 given a written severance package offer with a deadline of March  
28 26, 2010, for acceptance. The offer was for \$58,500, which was

1 five months' pay, payable every two weeks, five months of COBRA  
2 benefits, and \$8,000 in outplacement services. The offer was to  
3 end if Peterson found other employment prior to the end of the five  
4 month period. According to Van Dyke, "There was a lot of yelling  
5 when David was on the phone calling David a liar," and Peterson was  
6 "shaking and very visibly upset." Breed Decl. Ex. 3, at 12.  
7 Peterson did not accept the severance offer by March 26, 2010. He  
8 initiated this lawsuit on May 24, 2010.

### 9 STANDARD

10 Summary judgment is appropriate if there is no genuine issue  
11 of material fact and the moving party is entitled to judgment as  
12 a matter of law. Fed. R. Civ. P. 56(c). The moving party bears  
13 the initial responsibility of informing the court of the basis of  
14 its motion, and identifying those portions of "'pleadings,  
15 depositions, answers to interrogatories, and admissions on file,  
16 together with the affidavits, if any,' which it believes  
17 demonstrate the absence of a genuine issue of material fact."  
18 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (quoting Fed.  
19 R. Civ. P. 56(c)).

20 "If the moving party meets its initial burden of showing  
21 'the absence of a material and triable issue of fact,' 'the  
22 burden then moves to the opposing party, who must present  
23 significant probative evidence tending to support its claim or  
24 defense.'" Intel Corp. v. Hartford Accident & Indem. Co., 952  
25 F.2d 1551, 1558 (9th Cir. 1991) (quoting Richards v. Neilsen  
26 Freight Lines, 810 F.2d 898, 902 (9th Cir. 1987)). The nonmoving  
27 party must go beyond the pleadings and designate facts showing an  
28 issue for trial. Celotex, 477 U.S. at 322-23.



1 The substantive law governing a claim determines whether a  
 2 fact is material. T.W. Elec. Serv. v. Pacific Elec. Contractors  
 3 Ass'n, 809 F.2d 626, 630 (9th Cir. 1987). All reasonable doubts  
 4 as to the existence of a genuine issue of fact must be resolved  
 5 against the moving party. Matsushita Elec. Indus. Co. v. Zenith  
 6 Radio, 475 U.S. 574, 587 (1986). The court should view  
 7 inferences drawn from the facts in the light most favorable to  
 8 the nonmoving party. T.W. Elec. Serv., 809 F.2d at 630-31.

9 If the factual context makes the nonmoving party's claim as  
 10 to the existence of a material issue of fact implausible, that  
 11 party must come forward with more persuasive evidence to support  
 12 his claim than would otherwise be necessary. Id.; In re  
 13 Agricultural Research and Tech. Group, 916 F.2d 528, 534 (9th  
 14 Cir. 1990); California Architectural Bldg. Prod., Inc. v.  
 15 Franciscan Ceramics, Inc., 818 F.2d 1466, 1468 (9th Cir. 1987).

#### 16 DISCUSSION

17 Peterson's Complaint alleges a claim for Unpaid Wages under  
 18 ORS 65.140,<sup>3</sup> demanding six months severance pay, or \$70,000, and  
 19 the value of six months of health insurance, or \$6,000. Acumed  
 20 moves for summary judgment against Peterson's claim.

21 Whether Peterson's claim will survive summary judgment depends  
 22 on the law of contracts. Acumed argues that any alleged contract  
 23 is unenforceable because the parties did not agree on sufficiently  
 24 definite terms, and because any alleged contract was not supported  
 25

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26 <sup>3</sup> ORS Chapter 65 relates to general provisions for nonprofit  
 27 corporations, and ORS 65.140 does not exist. Paragraph 11 of  
 28 plaintiff complaint makes clear that he brings a claim under ORS  
 652.140, "Payment of wages on termination of employment."

1 by consideration. Peterson disagrees, and argues that even if  
2 there was no contract, he may still have a remedy under the  
3 doctrine of promissory estoppel. Acumed contends Peterson did not  
4 allege a claim for promissory estoppel in his complaint, and it is  
5 impermissible to do so in response to a motion for summary  
6 judgment. I address each of the arguments in turn.

7 I. Definiteness of Contract

8 Whether a contract exists is a question of law. Dalton v.  
9 Robert Jahn Corp., 209 Or. App. 120, 132, 146 P.3d 399 (2006), rev.  
10 den., 342 Or. 416, 154 P.3d 722 (2007). It is a longstanding  
11 principle of contract law that, "the formation of a contract  
12 requires a bargain in which there is a manifestation of mutual  
13 assent to the exchange and a consideration." Ken Hood Const. Co.  
14 v. Pacific Coast Const., Inc., 201 Or. App. 568, 578, 120 P.3d 6,  
15 11 (2005) (quoting Restatement (Second) of Contracts § 17(1)  
16 (1981)). "When the dispute concerns an unwritten agreement, the  
17 conclusion that the parties manifested mutual assent must be  
18 constructed from evidence of their negotiations or other past  
19 conduct." Kabil Developments Corp. v. Mignot, 279 Or. 151, 158,  
20 566 P.2d 505, 509 (1977) (internal quotations and citations  
21 omitted). "It must be constructed from their communications and  
22 overt acts, not their undisclosed intents and ideas." Id. Put  
23 otherwise, "Oregon follows the objective theory of contracts," and  
24 the existence of a contract depends on the parties' "objective  
25 manifestations of intent to agree to the same express terms."  
26 Sollars v. City of Milwaukie, 222 Or. App. 384, 389, 193 P.3d 75,  
27 78 (2008). "[A]s the Oregon Supreme Court has . . . explained,  
28 mutual assent, or what historically was considered as the 'meeting

1 of the minds' requirement, may be expressed in words or inferred  
2 from the action of the parties. Whether a statement or act is a  
3 manifestation of assent is a question of fact." Martin v. Comcast  
4 of Cal./Col./Fla./Ore., Inc., 209 Or. App. 82, 97, 146 P.3d 380,  
5 388 (2006) (internal citations and quotations omitted). "[W]hether  
6 the express terms of an agreement were indefinite [is] an issue for  
7 the court." Pritzker v. Carr, 113 Or. App. 310, 313, 832 P.2d  
8 1250, 1251 (1992). "[W]hether the parties gave a definite meaning  
9 to an ambiguous term [however] . . . . is a question of fact for  
10 the jury." Id.

11 Here, there were two meetings between Jensen and Peterson  
12 where an oral contract may have been formed.

#### 13 II. January 12 Meeting

14 To begin, the parties dispute whether Peterson had already  
15 resigned when the January 12 meeting took place. There is no  
16 written evidence of a resignation. According to Acumed, when  
17 Peterson called or sent a text message to Van Dyke towards the end  
18 of the January 2010 China trip, he communicated that he was  
19 resigning. According to Peterson, he did not resign, but  
20 communicated that he was thinking about resigning, contingent on  
21 working out the details of a severance package. The testimony of  
22 Van Dyke and Peterson differ on this point, and there is no written  
23 evidence. Thus, there is a question of fact as to whether Peterson  
24 had already resigned when the January 12 meeting took place. The  
25 evidence in the record must be evaluated by the finder of fact both  
26 with respect to determining what in fact was said by Peterson and  
27 what those words objectively manifested.

1 On the morning of January 12, Jensen had a conference call  
2 with Tucker, Van Dyke, and Koslowski. Following the meeting, Van  
3 Dyke wrote an email to the call participants detailing that they  
4 had "all agreed" that Peterson's severance package would likely  
5 include "Up to 6 months pay at his current salary," and "COBRA  
6 continuation (medical and dental) for his family for up to 6  
7 months," in addition to outplacement services. Van Dyke  
8 recommended it also include a letter of recommendation and a  
9 promise not to contest unemployment.

10 When Jensen met with Peterson later on January 12, Peterson  
11 alleges that Jensen told him that he was aware Peterson would like  
12 to resign, that he had talked with Tucker and others, and Acumed  
13 would give Jensen a severance package "better than what they did  
14 for Karsten." Jensen remembers saying "Acumed would work to create  
15 a severance for him similar to what we did for Karsten Zuendel."  
16 Both Jensen and Peterson knew that Karsten Zuendel received six  
17 months of his salary and six months of benefits for his severance  
18 package. This is the same basic package Van Dyke detailed in her  
19 email detailing what was discussed on the phone call earlier that  
20 day. According to Peterson, he accepted this "offer," and promised  
21 he was "willing to do whatever Acumed needed to make a clear  
22 transition to operating in [his] absence."

23 Acumed argues that the evidence related to this meeting is  
24 insufficient to establish an oral contract because there was no  
25 consideration and the terms were not sufficiently definite.

26 A. Consideration

27 A bilateral contract exists where "the mutual promises of the  
28 parties to the agreements are the consideration which supports it."

1 Temple Enterprises v. Combs, 164 Or. 133, 152, 100 P.2d 613, 621  
2 (1940).

3 In this case, the evidence creates a creates a triable issue  
4 of fact whether there was a bilateral contract. If Peterson is  
5 believed, Jensen promised him better than six months pay and six  
6 months of medical benefits in exchange for his resignation, or his  
7 promise to resign. Peterson's alleged promise to resign and "to do  
8 whatever Acumed needed to make a clear transition to operating in  
9 [his] absence," is a promise that would be sufficient  
10 consideration.

11 "[T]he first lesson in contracts [is] the peppercorn  
12 theory-that courts will not inquire into the adequacy of  
13 consideration, so long as it was true and valuable." Pope v.  
14 Savings Bank of Puget Sound, 850 F.2d 1345, 1356 (9th Cir. 1988).  
15 Here, the evidence of record leaves a triable issue of material  
16 fact for the jury.

17 B. Definiteness

18 A contract is sufficiently definite to be enforceable when it  
19 is "definite in all material respects, with nothing left for future  
20 negotiation." Booras v. Uyeda, 295 Or. 181, 191, 666 P.2d 791  
21 (1983). The caveat to this rule is that "minor details may be left  
22 to future agreement." Lang v. Oregon-Idaho Annual Conference, 173  
23 Or. App. 389, 397, 21 P.3d 1116 (2001). "A term is 'material' to  
24 an enforceable agreement when it goes to the substance of the  
25 contract and, if breached, defeats the object of the parties in  
26 entering into the agreement." Johnstone v. Zimmer, 191 Or. App.  
27 26, 34, 81 P.3d 92 (2003) (citation omitted). "Whether a  
28 contractual term is material is a question for the factfinder

1 unless the uncontested evidence leads to only one legal  
2 conclusion." Dalton v. Robert Jahn Corp., 209 Or. App. 120, 140,  
3 146 P.3d 399, 410 (2006).

4 Here, Van Dyke's January 12 email, Jensen's statements, and  
5 Peterson's statements create a question of fact whether both Jensen  
6 and Peterson considered that the material terms of the alleged oral  
7 contract included at least six months of salary and six months of  
8 medical benefits. The factual dispute is what Jensen actually  
9 said.

10 III. January 14-15 Meeting

11 According to Peterson, at the meeting on January 14 or 15,  
12 Jensen and Van Dyke communicated that "they would like to have  
13 their controller through the audit," which was scheduled to  
14 conclude by March 5, 2010. Peterson testified, "They said the  
15 severance package I received would be the same, assuming I . . .  
16 you know, that I behaved . . . during the audit." Id. Peterson  
17 alleged that Van Dyke said, "It's the same package, it just starts  
18 in March, in six weeks, not today." Peterson remembers, "they took  
19 my severance off the table" and said, "We won't pay you a severance  
20 unless you stay until March 5th." When Peterson asked for a  
21 written guarantee, Jensen allegedly said it wasn't possible, but,  
22 "You trust me, don't you?" According to Peterson, he agreed during  
23 that meeting to work until March 5, 2010. Id. at 79.

24 "Whether a statement or act is a manifestation of assent is a  
25 question of fact." Martin, 209 Or. App. at 97. Whether Jensen's  
26 statement about "trust," and Peterson's promise to work until March  
27 5 (and performance of the promise) are found to be manifestations  
28 of mutual assent is a question of fact for the jury.

1 To the extent no contract was formed during the second  
2 meeting, the same questions of fact remain about whether a contract  
3 was formed during the first meeting. If Peterson is believed that  
4 Van Dyke said, "It's the same package, it just starts in March, in  
5 six weeks, not today," then the same question of fact from the  
6 January 12 meeting remains: Which terms constitute the package?

7 Accordingly, I find that a question of material fact exists  
8 sufficient to survive Acumed's motion for summary judgment.

9 IV. Promissory Estoppel

10 In Peterson's Response to Acumed's motion for summary  
11 judgment, Peterson argues that even if the alleged oral contract  
12 was not sufficiently definite, Peterson still has a remedy under  
13 the doctrine of promissory estoppel. Peterson did not plead  
14 promissory estoppel in his Complaint. Therefore, Acumed argues  
15 that the court should not consider his promissory estoppel  
16 argument.

17 "In Oregon promissory estoppel is not a cause of action in  
18 itself, but is a subset of and a theory of recovery in breach of  
19 contract actions." Kraft v. Arden, CV No. 07-487-PK, 2008 WL  
20 4866182, at \*10 (D. Or. 2008). This court generally does not  
21 consider a new claim on summary judgment absent amendment of the  
22 pleadings. Id. However, if the allegations of the Complaint are  
23 sufficient to allege a promissory estoppel claim, the court may, at  
24 its discretion, reach the promissory estoppel claim on summary  
25 judgment. Id.

26 Under promissory estoppel, the party seeking enforcement of a  
27 promise must demonstrate: (1) a promise, (2) which the promisor, as  
28 a reasonable person, could foresee would induce conduct of the kind

1 which occurred, (3) actual reliance on the promise, (4) resulting  
2 in a substantial change in position." Bixler v. First Nat'l Bank,  
3 49 Or. App. 195, 199, 619 P.2d 895 (1980).

4 Here, the complaint alleges, "In January, 2010, plaintiff  
5 discussed severing his employment relationship with Acumed in a  
6 conversation with Acumed's President, David Jensen." Compl. ¶ 4.  
7 But, "Jensen told plaintiff that if he would continue working for  
8 Acumed until a pending audit was completed, plaintiff would receive  
9 six month's severance pay and a bonus." Compl. ¶ 5. The Complaint  
10 continues, "In reliance on the promise, plaintiff continued working  
11 for Acumed." Compl. ¶ 5.

12 Such allegations state the elements of a claim for promissory  
13 estoppel: (1) Jensen allegedly made a promise to pay a certain  
14 severance package if Peterson stayed through the audit, (2) Jensen  
15 could have reasonably foreseen that his promise would induce  
16 Peterson to stay through the audit, (3) Peterson did stay through  
17 the audit, and (4) Peterson would have otherwise left the position  
18 earlier. Whether each element of the promissory estoppel claim  
19 factually exists is an issue that must be addressed by a finder of  
20 fact. The record before the court does not eliminate any  
21 particular element.

22 Peterson's promissory estoppel theory, therefore, creates  
23 another reason why summary judgment must be denied.

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**CONCLUSION**

Defendants' Motion for Summary Judgment [#30] is denied.  
IT IS SO ORDERED,

Dated this 25th day of April, 2010.

/s/ Dennis J. Hubel

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Dennis James Hubel  
United States Magistrate Judge